



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
LAKE SUPERIOR COURT, HAMMOND**

GLADYS TOBIAS v. MARGARET AND THOMAS MANNELLA

Appeal from:

Lake Superior Court, Civil Division 5
The Honorable E. Duane Daugherty,
Judge Pro Tem

Oral Argument:

Monday, April 7, 2008
10:00—10:40 a.m. CT
20 minutes each side

CIVIL LAW
STATUTE OF FRAUDS

Did the trial court err in finding that Ms. Tobias was not entitled to share the profit made by the Mannellas on a sale of real estate in which Ms. Tobias had lived and made improvements?

Facts and Procedural History

Matthew Swierczynski is Margaret Mannella's brother. Sometime in 1997 or 1998, Swierczynski contacted Margaret and asked for her help in securing a place for him and Gladys Tobias. On March 4, 1998, the Mannellas purchased the Property, which was titled to the Mannellas, who paid \$19,189.53 of their own money, and obtained a mortgage from Calumet National Bank (the "Bank") for \$78,400. Thomas and Margaret testified that the Mannellas purchased the Property as an investment. According to Tobias, however, the Mannellas agreed to purchase the Property and hold the title, but after Tobias and Swierczynski made all the payments, the Property would be deeded to them.

On April 1, 1998, Margaret and

Ms. Tobias entered into a lease agreement, which stated that Tobias would occupy the Property for thirty-six months, beginning on April 1 and would pay \$750 per month, plus fifty-percent of the property taxes and assessments, and all of the utilities. However, instead of paying \$750 to the Mannellas, Swierczynski and Tobias made monthly payments to the Bank in amounts around \$1,100, apparently the amount of the Mannellas' mortgage.

Sometime in 2003 or 2004, a dispute arose between the parties, and Swierczynski and Tobias failed to make payments to the Bank. After unsuccessfully trying to resolve the issue, the Mannellas began **eviction proceedings**. On March 30, 2004, the trial court held a hearing and issued a Possession Order, in which it ordered Tobias to vacate the

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CASE SYNOPSIS



Property by May 31, 2004. On July 20, 2004, Tobias filed a **Counterclaim**, seeking damages for **unjust enrichment** and for repayment of money Tobias claimed she spent on improvements and excess rent paid. In this Counterclaim, Tobias alleged that she had advanced part of the purchase price for the Property and that she was to be reimbursed for said advancement. On January 25, 2005, the Mannellas sold the Property, making a profit of roughly \$95,000.

After the bench trial, the trial court issued an order in which it discussed the Statute of Frauds, and found that the Lease established the parties' status and obligations. The trial court then concluded that Tobias's claim for reimbursement for improvements made to the Property must fail, as Tobias did not obtain consent from the Mannellas as required in the Lease. Finally, the trial court found that Tobias had been paying rent in excess of the amount indicated in the Lease, and determined that Tobias had exceeded her total obligation under the Lease by \$9,044.54, and awarded her a judgment in that amount. Tobias now appeals.

Parties' Arguments

I. Statute of Frauds

The Statute of Frauds requires that agreements regarding the transfer of real estate be in writing. The alleged agreement regarding the Property's ownership was made orally, therefore it falls within the Statute of Frauds. However, the Statute of Frauds is an **affirmative defense** and may be waived if the party seeking to use it does not assert it in its

pleadings.

Initially, the parties disagree as to whether the trial court based its decision in part on the Statute of Frauds. Tobias also argues that the Mannellas' failure to raise the Statute of Frauds in their pleadings results in **waiver** of the defense. Tobias finally argues that even if the Mannellas did not waive this defense, the doctrine of **part performance** removes the alleged oral agreement from the Statute of Frauds and allows Tobias to seek enforcement of the alleged oral agreement.

II. Enforceability of the Lease

Under certain circumstances, courts will not enforce agreements if it is shown that the parties did not intend the agreement to create binding obligations. Tobias argues that the parties did not intend the written Lease to be a binding agreement, and that the trial court improperly relied on it. The Mannellas claim that they intended the Lease to be a valid contract and that the trial court properly enforced it.

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GLOSSARY OF TERMS



Affirmative Defense – A defense raised that will defeat the opposing party’s claim, even assuming that all the opposing party’s allegations are true. The party using this defense has the burden of raising and producing evidence to support the defense.

Counterclaim – A claim made against an opposing party after an original claim has been made.

Eviction Proceedings – Proceedings through which a party seeks to legally dispossess another from land or rental property.

Part Performance – An equitable doctrine under which courts will enforce oral agreements otherwise barred by the Statute of Frauds when a party has performed his part of the agreement to such an extent that the failure to enforce the contract would be unjust.

Statute of Frauds – In Indiana, one may not bring certain actions, including those involving a contract for the sale of land, “unless the promise, contract, or agreement on which the action is based . . . is in writing and signed by the party against whom the action is brought.” Ind. Code § 31-21-1-1.

Unjust Enrichment – An equitable theory under which a party must show that a benefit has been given to the other party and that allowing that party to keep the benefit without payment would be unjust.

Waiver – The relinquishment of a legal right or advantage.

TODAY'S PANEL OF JUDGES

Hon. Patricia Riley (Jasper County), Presiding

- Judge of the Court of Appeals since January 1994

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993.

Judge Riley is a former associate professor at St. Joseph's College in Rensselaer and is currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 205th case "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County)

- Judge of the Court of Appeals since March 1994

James S. Kirsch was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/

Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, of the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998



Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the United States Navy.

ATTORNEYS FOR THE PARTIES

For Appellant, Gladys Tobias:

**W. Joseph O'Connor
O'Connor Law Firm
Hammond**

William Joseph O'Connor, a native of Hammond, received a B.A. from the University of Notre Dame in 1974 and his J.D. in 1978 from the Pepperdine University School of Law. Prior to entering law school, he worked as a steel fabricator at Graver Tank & Manufacturing.

Mr. O'Connor was admitted to the state bar of Indiana in the fall of 1978 and began practice as a private practitioner in Hammond. He practiced with O'Connor & Weigle and O'Connor & O'Connor before opening his solo practice in 1995. He concentrates in the areas of civil litigation and appellate practice. From 1984 to 1995, Mr. O'Connor was Assistant City Attorney for the City of Hammond. For five years in the late 1990s and again since 2004, Mr. O'Connor has served as Corporation Counsel for the City of Hammond.

Mr. O'Connor has been president of Lake County Right to Life since 2003. He is past president of the Lake County Bar Association, where he was also a director for 10 years, from 1988 to 1998. He is a life member of the NAACP. Since 1999, he has served as a partner with Special Olympics and been involved in music production as president of The Claddagh Company. He is a member of the Indiana State, American, Lake County, and Hammond bar associations.

Mr. O'Connor has written speeches and developed themes for Hammond Mayor Thomas McDermott, Hammond City Judge Diane Cross Gonzalez, Mayor Duane Dedelow, and then-candidate for governor, Mitch Daniels.

Mr. O'Connor and his wife Sarah have four children.



For Appellees, Margaret and Thomas Mannella:

**David Weigle
David W. Weigle and Associates
Hammond**

David Weigle maintains a solo practice of law in Hammond. He is engaged in the general practice of law with concentrations in the areas of civil rights, employment, school law, municipal law, and special education.

Mr. Weigle was admitted to practice in the State of Indiana in 1971. He is also admitted to practice before the United States District Courts for the Northern and Southern Districts of Indiana, the Central District of Illinois,

the Western District of Michigan, and the Supreme Court of the United States.

Mr. Weigle earned his undergraduate degree in finance from the University of Notre Dame in 1967 and his law degree from Notre Dame in 1970. He is former Corporation Counsel for the City of Hammond. He lives in Hammond with his wife of 37 years, Cecelia, a special education teacher and the mother of their five adult children.